IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1851 OF 1981

Kakkarlal Vishwanathan .....Plaintiff
vs.
q M/s. Indian Silk Mfg. Co.P.Ltd .....Defendants

Ms. N. Pandya i/b. S.M. Menon for the plffs.

N.H. Helekar for the defnds.

CORAM: S.U. KAMDAR, J.

DATE : 24TH JUNE,2005.

JUDGMENT :

1. The present suit has been filed for the recovery of sum of Rs.66,462.01/- with further interest on the principal amount of Rs.52,747.63/- at the rate of 12% p.a. from the date of the suit till payment and or realisation. The factual background of the present case are as under :

2. The plaintiff was the supplier of

handwoven cotton fabrics. It is the case of the plaintiffs that as per the orders placed by the defendants for supply of the said material in accordance with the specification and samples approved by the defendants, the defendants affected supply of the said goods being hand woven cotton fabrics. It is his case that the said supplies had been affected by the plaintiff from time to time since December, 1997 and there has been various payments from the defendant to the plaintiff inrespect of the said goods sold and delivered from time to time. It is the case of the plaintiff that there has been current mutual running account by and between the plaintiffs and the defendants. In the course of the dealing the plaintiff has placed an order bearing Order No.MAN/125 dated 31.8.1978 for supply 105000 meters of 100% cotton handloom sack cloth fabrics alongwith the approved samples. In terms of the said order the plaintiffs supplied to the defendants 2723.50 meters of the said fabric and raised Bill bearing No.KV/105/78 dated 10.11.1978. The said goods were despatched under

a lorry receipt No. H 580841 dated 10.11.1978. It is the case of the plaintiff that inrespect of the said supply of the goods the documents were negotiated through the bank being Central Bank of India and the price of the goods payable by the defendant to the plaintiff was Rs.17,744.13/-. By a letter dated 19.10.1978 the plaintiff informed the defendants about the despatch of the said goods. The defendants took delivery of the said goods but did not retire the documents which was negotiated through the Central Bank of India. The defendant thereafter requested that the plaintiff should sent the said documents directly to the defendant. Accordingly the defendant has forwarded the said documents. Inrespect of the said goods no payment has been received by the plaintiff.

3. It is further the case of the plaintiff that on 31.1.1979 the defendant placed second order for despatch of the goods and requested that the documents be forwarded directly and the defendant also sought credit period of 15 days

for making payment of the said goods. Pursuant to the said purchase order the plaintiff despatched the goods under a lorry receipt No. 66058 dated 13.6.1979 and raised an invoice bearing No. KV/243/79 dated 13.6.1979 for a sum of Rs.18,792,30/-. The plaintiff also sent the said goods in accordance with the requirement and specification of the defendant. It is the case of the plaintiff that the defendant promised to make the payment. However the defendant has failed and neglected to make the aforesaid payment. The plaintiff thereafter made a further despatch of the goods in pursuance of the purchase order bearing No.ROSS/195 and despatched the goods under lorry receipt No. K 38132. The plaintiff also raised bill inrespect of the said consignment bearing No. KV/250/79 dated 30.6.1979 for a sum of Rs.16,211.20/-. The documents inrespect of the said goods were also forwarded to the defendant but the defendant did not make the payment of the price of the said goods.

4. The defendant thereafter informed the plaintiff that they had posted the cheque by registered post but the plaintiff never received any such cheque. It is thus the case of the plaintiff that inrespect of the aforesaid three bills there is due and payable by the defendant to the plaintiff in accordance with the price of claim being a principal amount of Rs.52,747.63/-. The break up thereof is set out in Exhibit-9 of the plaint. The plaintiff has claimed interest on the said amount at the rate of 12% p.a. from 1.8.1979 till 1.8.1979 till the date of the suit being a sum of Rs.13,714.38/- totalling to an amount of Rs.66,462.01/-. The plaintiff has accordingly filed the suit for the recovery of the aforesaid amount. The defendants have filed written statement. In the written statement the defendant has contended that the suit is barred by the law of limitation. However in para-3 of the written statement the defendant has admitted the supply of the said goods. However they denied that the goods supplied were of the proper specification. In para-4 of the written

statement it has been contended that the goods supplied were defective and not in accordance with the specification provided in the purchase order. It has been further contended that there was delay in supply of goods and thus the defendant suffered heavy losses and the defendant had to supply the goods by air-cargo. According to the plaintiff the defendant has suffered heavy freight charges. The defendant has thus claimed a set-off in para-5 of the written statement towards the alleged losses. In para-7 of the plaint the defendant denied having received the goods inrespect of bills No.243 and thus denied the liability of making payment to the plaintiff. On the aforesaid pleadings between the parties the following issues were framed by this court on 6.11.2001.

1. Whether the suit is barred by the law of limitation ?

2. Whether the defendants prove that the goods supplied vide bill no. 243 are after undue delay and they suffered heavy loss because of the late delivery ?

3. Whether, the defendants prove that the quality of the goods supplied by the plaintiffs to the defendants under Invoice NO.KV/105/78 dated 10th November 1978 was not in accordance with the approved sample furnished by the defendant to the plaintiffs vide their order dated 31st August 1978 ?

4. Whether the defendants prove that they are entitled to adjust the loss suffered by them against the alleged dues of the plaintiffs ?

5. Whether the defendants were justified in not making payments of the three bills in view of the financial loss suffered by them to the extent of

Rs.36,043.60?

6. Whether the plaintiffs are entitled to recover from the defendants a sum of Rs.66,462.71/- against the bill nos.105/78, 243/79, 250/79 with further interest at the rate of Rs.12% on Rs.52,747.60 from the date of the suit till realisation ?

7. Whether the defendants prove that they did not receive the bills and goods and hence are not liable to pay the suit claim to the plaintiffs ?

8. What reliefs ?

5. Both the parties have led the evidence of one witness each. Learned counsel for the plaintiff has produced in his examination in

chief large number of documents inter-alia pertaining to the invoices, delivery of the goods and correspondence between the parties. In his evidence in chief he has stated that the aforesaid amount is due and payable by the defendant to the plaintiff herein. The witness of the plaintiff was thereafter cross-examined by the learned counsel for the defendants. In his cross-examination he has stated that it is true that the delivery of the goods was to be effected on or before 15.10.1978. However the company extended the date for delivery of the said goods and accordingly the goods were delivered in the extended period of time. He has further stated in his evidence that the documents which were negotiated through banks were not honoured by the defendants and the said documents were returned and thereafter the said documents were sent directly to the plaintiff inrespect of the said bills. In his cross examination he has denied that there was a delay in delivery of the goods. Insofar as the quality of goods is concerned the witness was not cross examined at all. Similarly

the defendant has also produced his witness who has deposed that the delivery of the goods were made after the date mentioned in the order and thus there was delay in delivery of the goods. He has mentioned that because of the delay the goods were required to be transported from air-cargo. He has tried to give an evidence that the goods were meant for export and therefore it was essential that there should be on time delivery of the goods. The said witness was cross examined in detail and in most of the cases the witness has given an evasive answer by saying that he would have to look into the papers to give answer. However on the basis of the evidence both documentary as well as oral produced before me I answer the issue as under :

6. Issue no.1-As far as the issue of limitation is concerned the learned counsel for the defendant did not press the same. In any event I find from the record that the invoices under which the goods are delivered are dated 10.11.1978, 13.6.1979 and 30.6.1979. The suit

has been filed on 17.10.1981. Thus even from the date of the first invoice dated 10.11.1978 the suit is within a period of three years and thus within time. The issue of limitation is therefore answered accordingly.

7. Issue no.2 which has been urged by the learned counsel for the defendant is in respect of delay in delivery of the goods. Learned counsel in support of the arguments has relied upon an order dated 31.8.1978 which inter-alia stipulates the date of delivery of shipment as 15.10.1978. Admittedly according to the parties the goods are delivered sometime in or about November 1978. Thus it has been contended by the learned counsel for the defendant that there has been delay in delivery of the goods and therefore the defendant has suffered lossess and thus the defendants are entitled to adjust the price of the goods against their claim for losses suffered by them without going into the second aspect of losses suffered by the defendant. I find from the record that there is no delay in delivery of

the goods. Learned counsel appearing for the plaintiff has drawn my attention to a letter dated 19.10.1978 addressed by the plaintiff to the defendant in which it was specifically mentioned that the delivery of the goods will be effected in the early part of November. The said letter has been accepted by addressing a letter dated 21.10.1978 in which they have noted the contents of the letter and they will retire the bills even if the goods are delivered in early part of November, 1978. Both the letters being Exhibit-4 and 5 indicates that by mutual consent of the parties time to effect the delivery of the goods has been infact extended by the defendants themselves and accepted to retire the goods even in November, 1978. Thus the contention of the learned counsel for the defendant that there was delay in delivery of the goods is without any basis. However the learned counsel for the defendant contends that by letter dated 26.2.1980 they have put the plaintiff to the notice that they will claim compensation for the lossess suffered by them. I am unable to accept the

aforesaid contention for the reason because the letter dated 26.2.1980 is a letter which is much subsequent to the delivery of the goods and acceptance thereof. I find that the said letter does not pertains to the first invoice but it pertains to another purchase order all together. Thus in that circumstances I do not find any merits inrespect of the defence raised by the defendants that there was a delay in delivery of the goods. In so far as the loss is concerned the defendant has failed to produce any evidence or material to show that they have suffered any amount of loss nor any such amount is quantified in pleadings and thus the said contention is totally without any merits and substance and is accordingly required to be rejected.

8. In so far as the issue no.3 is concerned the defendant has failed to prove by any material evidence that the goods supplied by the plaintiff to the defendants were not in accordance with the approved sample. The defendant has not produced any material or evidence nor the learned counsel

for the defendant has pressed this issue by arguing before me that the goods were defective or not. Thus I answer the issue nos.2,3 and 4 in negative.

9. As far as issue no.5 and 6 they are separately discussed herein below.

10. As far as issue no.7 is concerned the contention is raised that the defendant has not received the goods inrespect of the Invoice No.243. However in the course of the evidence my attention has been drawn to exhibit-P.26 which is an Invoice for a sum of Rs.18,719.30/-. Page 56 of the compilation which is a lorry receipt which contains an acknowledgment of the receipt of the goods by the defendant and which is Exhibit-P.28. Page 57 and 58 which is a letter dated 14.6.1979 which is a letter dated 14.6.1979 in which it has been mentioned that the goods are delivered and the defendant has received the said letter since the same was sent by registered A.D. On the over all evidence produced before me and in particular

the documents which have been mentioned I find that the goods are duly delivered by the plaintiff to the defendant and the contention raised of non-delivery of the goods inrespect of one of the bill being Invoice No. 243 is without any substance and therefore I answer the Issue no.7 in negative.

11. Now turning to Issue no.5 and 6 which are interconnected I find that the plaintiff has able to establish the case fully that the plaintiffs are liable to the amount outstanding of Rs.52,747.60/- being the amount covered by three invoices and the plaintiff has failed to justify any reason for non-payment of of the aforesaid amount. However the learned counsel for the defendant has contended that there is no agreement to pay interest at the rate of 12% p.a. on outstanding amount and therefore no such interest can be levied by the plaintiff against the defendant. It is an admitted position that there is no agreement to pay interest. However the plaintiff has by their advocate letter dated

1.9.1981 has claimed interest at the rate of 12% p.a. The said notice has been duly received by the defendant. In my opinion the plaintiffs are entitled to interest at the rate of 12%p.a. from the date of the notice till payment and or realisation. However in absence of any agreement to pay any interest at the rate of 12% p.a. the plaintiffs are not entitled to interest prior to the date of the advocates notice since they did not claim interest at all. In view thereof I pass the following order.

. There shall be decree in favour of the plaintiff and against the defendant for the principal amount of Rs.52,747.63/- as amount due and payable under the said three invoices at the rate of 12% p.a.. Insofar as interest is concerned the claim of Rs.13,714.38/- is dismissed in absence of any agreement to pay interest. However the plaintiff will be entitled to pay interest from the date of notice 1.9.1981 till payment and or

realisation. Suit is decreed accordingly. Defendants to pay cost of the suit to the plaintiff.

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